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ORIGINAL  
FILED

MAY 31 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

Attorneys for Defendants

UNUM GROUP (Erroneously named and served as "UNUM"  
and formerly known as UNUMPROVIDENT CORPORATION)  
UNUM LIFE INSURANCE COMPANY OF AMERICA  
(Erroneously named and served as "UNUM PROVIDENT LIFE  
INSURANCE COMPANY OF AMERICA"), FIRST UNUM  
LIFE INSURANCE COMPANY OF AMERICA, and THE  
PAUL REVERE LIFE INSURANCE COMPANY

SC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALEXANDER P. SOMMER, an individual, by )  
and through his Guardian ad Litēm, )  
CHRISTIAN SOMMER, )

Plaintiff,

vs.

UNUM, UNUMPROVIDENT  
CORPORATION; UNUM PROVIDENT LIFE  
INSURANCE COMPANY OF AMERICA;  
FIRST UNUM LIFE INSURANCE  
COMPANY OF AMERICA; PAUL REVERE  
LIFE INSURANCE COMPANY,

Defendants

Case No.:

07

2846

NOTICE OF REMOVAL OF ACTION  
TO FEDERAL COURT

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 Please take notice that, pursuant to 28 U.S.C. sections 1332, 1441 and 1446, defendants  
 3 UNUM GROUP (Erroneously named and served as "UNUM" and formerly known as  
 4 UNUMPROVIDENT CORPORATION), UNUM LIFE INSURANCE COMPANY OF  
 5 AMERICA (Erroneously named and served as "UNUM PROVIDENT LIFE INSURANCE  
 6 COMPANY OF AMERICA"), FIRST UNUM LIFE INSURANCE COMPANY OF AMERICA,  
 7 and THE PAUL REVERE LIFE INSURANCE COMPANY (collectively "defendants") hereby  
 8 remove to the United States District Court for the Northern District of California the state court  
 9 action described below ("the action") on the grounds that (1) this court has federal question  
 10 jurisdiction in that the action arises under the Employee Retirement Income Security Act of 1974  
 11 ("ERISA"), 29 U.S.C. section 1001, *et seq.*; (2) this court has federal question jurisdiction in that  
 12 the action purportedly arises under The Racketeer Influenced And Corrupt Organizations Act  
 13 ("RICO"), 18 U.S.C. § 1946, *et seq.* ("RICO"); (3) there is complete diversity of citizenship  
 14 between plaintiff Alexander P. Sommer ("plaintiff"), a citizen of the State of California, and  
 15 Unum Group, a citizen of the state of Delaware, incorporated in the State of Delaware and  
 16 having its principal places of business in Chattanooga, Tennessee, and Portland, Maine, Unum  
 17 Life Insurance Company of America, a citizen of the State of Maine, incorporated in the State of  
 18 Maine and having its principal place of business in the city of Portland, Maine, First Unum Life  
 19 Insurance Company of America, incorporated in the State of New York and having its principal  
 20 place of business in the New York, and The Paul Revere Life Insurance Company incorporated  
 21 in the Commonwealth of Massachusetts and having its principal place of business in Worcester,  
 22 Massachusetts; (4) the amount in controversy in the action exceeds the jurisdictional minimum  
 23 of \$75,000, as required by section 1332(a); and (5) the foregoing facts were true at the time the  
 24 complaint in this matter was filed and they remain true as of the date of filing of this Notice of  
 25 Removal.

26 I.

27 **FEDERAL QUESTION JURISDICTION**

28 1. On or about May 1, 2007, plaintiff filed a first amended complaint in the Superior

1 Court of the State of California in and for the County of Marin entitled "*Alexander P. Sommer,*  
2 *plaintiff v. Unum, UnumProvident Corporation, Unum Provident Life Insurance Company of*  
3 *Emrica, First Unum Life Insurance Company of America, Paul Revere Life Insurance Company,*  
4 *and Does 1-300, Defendants,*" case no. CIV 064927.

5 2. Defendants first received a copy of the summons and the first amended complaint  
6 on May 2, 2007, through various means for service of process. Various other generic Marin  
7 Superior Court documents also were served with the complaint. True and complete copies of the  
8 summons, complaint, and other forms received by defendants are attached hereto as Exhibit 1.

9 3. Defendants have not been served with, nor have they received, any other  
10 pleadings pertaining to the action other than those included in Exhibit 1. Defendants are  
11 informed and believe, and thereon allege, that other than the pleadings attached to this notice of  
12 removal, there have been no further pleadings, process, or orders filed in this action.

13 4. Defendants have filed this notice of removal within 30 days of receipt by any  
14 defendant of plaintiff's state court complaint.

15 5. This is a civil action over which the court has original jurisdiction under 28  
16 U.S.C. section 1331, and is one that may be removed by defendants to this court pursuant to the  
17 provisions of 28 U.S.C. section 1441(b), in that plaintiff's purported claims arise under and are  
18 governed by The Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*  
19 ("ERISA") and support removal based on federal question jurisdiction. 28 U.S.C. § 1331; 29  
20 U.S.C. § 1001 *et seq.*; *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 57, 107 S.Ct. 1549, 95  
21 L.Ed.2d 39 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 107 S.Ct. 1542, 95 L.Ed.2d  
22 55 (1987).

23 6. This is a civil action over which the court has original jurisdiction under 28  
24 U.S.C. section 1331, and is one that may be removed by defendants to this court pursuant to the  
25 provisions of 28 U.S.C. section 1441(b), in that plaintiff's purported claims allegedly pertain to  
26 The Racketeer Influenced And Corrupt Organizations Act, 18 U.S.C. § 1946, *et seq.* ("RICO")  
27 and support removal based on federal question jurisdiction. 28 U.S.C. § 1331; 18 U.S.C. § 1964,  
28 *et seq.*

7. In the complaint, plaintiff alleges that he is entitled to disability benefits under alleged group policies of insurance related to his employment, and that the policies and claims are governed by ERISA. (FAC, paras. 17 and 23).

8. The allegations of the complaint establish that ERISA preempts plaintiff's complaint and that this court has federal question jurisdiction, pursuant to 28 U.S.C. section 1331 and 29 U.S.C. section 1001 *et seq.* Therefore, removal is proper.

9. The allegations of the complaint establish that RICO preempts plaintiff's complaint and that this court has federal question jurisdiction, pursuant to 28 U.S.C. section 1331 and 18 U.S.C. section 1946, *et seq.* Therefore, removal is proper

## II.

## DIVERSITY JURISDICTION

10. This court also has jurisdiction over this action under the provisions of 28 U.S.C., § 1332, and the action may be removed pursuant to the provisions of 28 U.S.C., § 1442(b), in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, as set forth more fully below.

11. Plaintiff is a resident of California. (FAC, ¶ 2.)

12. Unum Group is, and at the time of the filing of this action was, a citizen of the State of Delaware, incorporated in the State of Delaware and having its principal places of business in Chattanooga, Tennessee, and Portland, Maine.

13. Unum Life Insurance Company of America is, and at the time of the filing of this action was, a citizen of the State of Maine, incorporated in the State of Maine and having its principal place of business in the Portland, Maine.

14. First Unum Life Insurance Company of America is, and at the time of the filing of this action was, a citizen of New York, incorporated in the State of New York and having its principal place of business in New York.

15. The Paul Revere Life Insurance Company is, and at the time of the filing of this action was, a citizen of Massachusetts, incorporated in the Commonwealth of Massachusetts and having its principal place of business in Worcester, Massachusetts.

1           16.     This court's jurisdictional minimum of an amount in controversy in excess of  
2 \$75,000 is satisfied as follows:

3           (a)     By filing the complaint in Superior Court, plaintiff represents that he is  
4 entitled to recover damages in excess of the minimum superior court jurisdictional threshold of  
5 \$50,000.

6           (b)     Plaintiff seeks to recover monthly disability benefits under the purported  
7 policy or policies. Although defendants deny plaintiff is entitled to recover such damages, the  
8 court may consider the potential for such a recovery in this action in determining whether the  
9 amount in controversy requirement is met for purposes of removal. Defendants note, however,  
10 that plaintiff has filed previous lawsuits related to his purported claims, the claims have been  
11 adjudicated in federal court, and litigation subsequent to such adjudication has resulted in  
12 dismissals of plaintiff's lawsuits (on *res judicata* grounds), Rule 11 sanctions, and attorneys fees  
13 and costs have been granted.

14           (c)     Plaintiff claims to have suffered emotional injury due to defendants'  
15 alleged failure to pay benefits due, for which he claims damages in an amount to be shown at  
16 trial. (FAC, ¶¶ 37, 60, Prayer for Relief, ¶ 5.) Although defendants deny plaintiff is entitled to  
17 recover such damages, the court may consider the potential for such a recovery in this action in  
18 determining whether the amount in controversy requirement is met for purposes of removal.

19           (d)     Plaintiff seeks an award of general and special damages according to  
20 proof. Given the nature of the allegations contained in the complaint, it is probable that  
21 plaintiff's request for general damages alone would exceed the jurisdictional limit of this court.

22           (e)     Plaintiff claims he is entitled to an award of exemplary damages against  
23 defendants because their conduct allegedly was oppressive, fraudulent, and malicious. (FAC, ¶  
24 61, Prayer for Relief.) "Where both actual and punitive damages are recoverable under a  
25 complaint each must be considered to the extent claimed in determining jurisdictional amount."  
26 *Bell v. Preferred Life Assurance Society*, 320 U.S. 238, 240, 64 S.Ct. 5, 88 L.Ed. 15 (1943).  
27 Considering the allegations in the complaint, plaintiff's request for punitive damages must be  
28

1 included in calculating whether the jurisdictional limit is met in this case for purposes of  
2 removal.

3 (f) Plaintiff claims he is entitled to attorney's fees in amount to be determined.  
4 (FAC, Prayer, ¶ 2.)

5 (g) Plaintiff undoubtedly will seek an award of interest on his alleged  
6 damages at the legal rate (10%). The court should consider the potential recovery of interest in  
7 assessing the amount in controversy.

8 17. In light of plaintiff's request for accrued benefits allegedly owed, general and  
9 compensatory damages, punitive damages, interest, and attorney's fees, it is more likely than not  
10 that the amount in controversy in this case exceeds the jurisdictional minimum of \$75,000.  
11 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9<sup>th</sup> Cir., 1996) [citing *Tapscott v. MS*  
12 *Dealer Serv. Corp.*, 77 F3d 1353, 1357 (11<sup>th</sup> Cir., 1996.)

### 13 III.

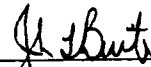
### 14 CONCLUSION

15 On the basis of federal question *and* diversity jurisdiction, as set forth above, defendants  
16 seek removal of this action from the Superior Court of the State of California in and for the  
17 County of Marin, in which it is now pending, to the District Court of the United States for the  
18 Northern District of California, San Francisco Division.

19 KELLY, HERLIHY & KLEIN LLP

20  
21 Dated: May 31, 2007

22 By



John T. Burnite

Attorneys for Defendants

23 UNUM GROUP (Erroneously named and served as "UNUM"  
24 and formerly known as UNUMPROVIDENT CORPORATION)  
25 UNUM LIFE INSURANCE COMPANY OF AMERICA  
26 (Erroneously named and served as "UNUM PROVIDENT LIFE  
27 INSURANCE COMPANY OF AMERICA"), FIRST UNUM  
28 LIFE INSURANCE COMPANY OF AMERICA, and THE  
PAUL REVERE LIFE INSURANCE COMPANY

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## **EXHIBIT 1**



MAY-01-2007 22:30

From: STEELMAN LAWMAN

To: 12136171562

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RECEIVED

SUMMONS  
(CITACION JUDICIAL)

MAY 04 2007

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

UNUM PROVIDENT CORPORATION, UNUM PROVIDENT LIFE INSURANCE COMPANY OF AMERICA, FIRST UNUM LIFE INSURANCE COMPANY, PAUL REVERE LIFE INSURANCE COMPANY, and UNITED STATES LIFE INSURANCE COMPANY

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Alexander P. Sommer

LAW DEPT.

FILED

MAY 14 2006

KIM T. TURNER  
MARIN COUNTY SUPERIOR COURT  
By: J. Naue, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court as if have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the court clerk's office. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.legalhelpforall.org](http://www.legalhelpforall.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen este citación y papeles legales para proporcionar una respuesta por escrito a esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegerá. Su respuesta por escrito debe estar en forma legal correcta si desea que presida su caso en la corte. Se puede que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le notificó esta citación. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de costos. Si no presenta la respuesta a tiempo, podría perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más aviso previo.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que califique para los servicios para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.legalhelpforall.org](http://www.legalhelpforall.org)), en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

Main Branch

3501 Civic Center Drive, San Rafael, CA 94903

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

STEPHEN W. STEELMAN (Bar # 196147)

LAW OFFICE OF STEPHEN W. STEELMAN

22 BATTERY STREET, SUITE 333, SAN FRANCISCO, CA 94111

DATE:

(Fecha) NOV 14 2006

KIM TURNER

Clerk, by  
(Secretario)

J. NAUE

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Paul Revere Life Insurance Company

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.50 (partner)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (co-partnership)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.60 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):



Form Adopted by: Judiciary Use  
Judicial Council of California  
SSP-100 (Rev. January 1, 2004)

SUMMONS

Date of Civil Procedure 55 412.30. 465

Lawless & Associates California Judicial Unit of Forms

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To: 12136171562

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**RECEIVED****MAY 04 2007****LAW DEPT.**

1 STEPHEN W. STEELMAN (CSBN 196147)  
 2 LAW OFFICE OF STEPHEN W. STEELMAN  
 22 Battery Street, Suite 333  
 San Francisco, CA 94111  
 3 Tel. (415) 593-3777  
 Fax (415) 593-3778

4 Attorney for Plaintiff  
 5 ALEXANDER P. SOMMER

6  
 7  
 8  
 9 **IN THE SUPERIOR COURT OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF MARIN**

-00000-

10  
 11 ALEXANDER P. SOMMER, an individual, by  
 and through his Guardian ad Litem,  
 12 CHRISTIAN SOMMER,

13 Plaintiff,

14 v.

15 UNUM, UNUM PROVIDENT CORPORATION,  
 16 UNUM PROVIDENT LIFE INSURANCE  
 COMPANY OF AMERICA, FIRST UNUM  
 17 LIFE INSURANCE COMPANY OF AMERICA,  
 18 PAUL REVERE LIFE INSURANCE  
 COMPANY

19 and,

20 DOES 1-300,

21 Defendants.

CASE NO. CIV 064927

22  
 23 **FIRST AMENDED**  
**COMPLAINT FOR DAMAGES**

24 1. UNDER THE RACKETEERING  
 AND INFLUENCED CORRUPT  
 ORGANIZATION ACT  
 (18 USC 1961 et seq. (RICO));  
 2. UNDER THE CALIFORNIA  
 UNFAIR BUSINESS PRACTICES  
 ACT (BUSINESS AND  
 PROFESSIONS CODE §17200);  
 3. FOR INDEMNITY; AND  
 4. FOR PUNITIVE DAMAGES.

(DEMAND FOR JURY TRIAL)

25  
 26  
 27  
 28  
 First Amended Complaint:

Sommer v. UNUM

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MAY-01-2007 22:31

From: STEELMAN LAWMAN

To: 12136171562

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1 COMES NOW Plaintiff, ALEXANDER P. SOMMER, who, by reason of the following  
2 causes of action against defendants UNUM, Unum Provident Life Insurance Company of  
3 America, Inc., First Unum Life Insurance Company, Paul Revere Life Insurance Company, Inc.,  
4 the United States Life Insurance Company Inc., and DOFS 1 - 300, inclusive, and each of them,  
5 alleges as follows:

6  
7 **I**  
**JURISDICTIONAL ALLEGATIONS**

- 8 1. The sum total of all claims meets the jurisdictional limits of the above-captioned court.  
9 2. At all times herein mentioned, Plaintiff Alexander P. Sommer was and is an individual  
10 living in the County of Marin, State of California.  
11 3. Plaintiff is informed and believes, and based thereon alleges, that, in early 2007,  
12 defendant Unum Provident Corporation changed its name to UNUM. Plaintiff is also informed  
13 and believes, and based thereon alleges that, at all times relative hereto, defendant UNUM was the  
14 successor in interest to defendant Unum Provident Corporation. [These two defendants are  
15 sometimes referred to, collectively, hereinafter as "UNUM"]. At all times herein mentioned, and  
16 specifically from a period beginning December 4, 1986 and continuing through September 11,  
17 2003, defendant UNUM/Unum Provident Corporation was a registered California Corporation.  
18 On September 11, 2003 UNUM surrendered its registration as a California corporation. UNUM  
19 remains a Delaware corporation whose primary place of business is Chattanooga, Tennessee.  
20 4. At all times herein mentioned, Unum Life Insurance Company of America was and is a  
21 registered California corporation licensed to do business in and, in fact, doing business in, the  
22 State of California. Plaintiff is informed and believes, and based thereon alleges, that defendant  
23 Unum Life Insurance Company of America is a wholly or partially owned subsidiary of defendant  
24 UNUM.  
25 5. At all times herein mentioned, First Unum Life Insurance Company was and is a  
26 corporation, domiciled in the state of New York. Defendant First Unum Life Insurance Company  
27 is not licensed to do business in California but nonetheless, did sell disability insurance to  
28 Plaintiff in this state. Plaintiff is informed and believes, and based thereon alleges, that defendant

First Amended Complaint

- 2 -

Sommer v. UNUM

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To: 12136171562

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1 First Unum Life Insurance Company is a wholly or partially owned subsidiary of defendant  
2 UNUM.

3 6. At all times herein mentioned, and specifically since November 13, 1930, Paul Revere  
4 Life Insurance Company was and is a registered California corporation licensed to do business in  
5 and, in fact doing business in, the State of California. Plaintiff is informed and believes, and  
6 based thereon alleges, that defendant Paul Revere Life Insurance Company is a wholly or partially  
7 owned subsidiary of defendant UNUM.

8 7. At all times herein mentioned, and specifically since January 22, 1947, United States Life  
9 Insurance Company was and is a licensed California Corporation licensed to do business in and,  
10 in fact doing business in, the State of California.

11 8. Plaintiff is currently unaware of the identities of the Presidents and/or CEOs of defendant  
12 UNUM and therefore and hereby names such Presidents and/or CEOs as DOES 1 - 15. Plaintiff  
13 will amend this Complaint to allege their true names, capacities, and legal form when ascertained.  
14 Plaintiff is informed and believes, and thereon alleges, that each of these fictitiously named  
15 Defendants is legally responsible in some manner for the occurrences, matters and wrongs herein  
16 alleged and, specifically that such DOE defendants did operate and manage the enterprise known  
17 as First Unum Life Insurance Company as criminal enterprise, supervising and overseeing the  
18 wrongs herein alleged and is, accordingly, responsible for such wrongs and for plaintiff's damages.  
19 Plaintiff's losses and damages herein alleged were proximately caused by such conduct of these  
20 fictitiously named Defendants as well as the Defendants who are specifically named herein.

21 9. Plaintiff is currently unaware of the identities of the Presidents and/or CEOs of defendant  
22 Unum Provident Corporation and therefore, and hereby, names such Presidents and/or CEOs as  
23 DOES 16-30. Plaintiff will amend this Complaint to allege their true names, capacities, and legal  
24 form when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of these  
25 fictitiously named Defendants is legally responsible in some manner for the occurrences, matters  
26 and wrongs herein alleged and, specifically that such DOE defendants did operate and manage  
27 the enterprise known as UNUM as criminal enterprise, supervising and overseeing the wrongs  
28 herein alleged and is, accordingly, responsible for such wrongs and for plaintiff's damages.

First Amended Complaint:

- 3 -

Sommer v. UNUM

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1 Plaintiff's losses and damages herein alleged were proximately caused by such conduct of these  
2 fictitiously named Defendants as well as the Defendants who are specifically named herein.

3 10. Plaintiff is currently unaware of the identities of the Presidents and/or CEOs of Unum  
4 Life Insurance Company of America and therefore and hereby names such Presidents and/or  
5 CEOs as DOES 31-45. Plaintiff will amend this Complaint to allege their true names, capacities,  
6 and legal form when ascertained. Plaintiff is informed and believes, and thereon alleges, that each  
7 of these fictitiously named Defendants is legally responsible in some manner for the occurrences,  
8 matters and wrongs herein alleged and, specifically that such DOE defendants did operate and  
9 manage the enterprise known as Unum Provident Life Insurance Company of America as criminal  
10 enterprise, supervising and overseeing the wrongs herein alleged and is, accordingly, responsible  
11 for such wrongs and for plaintiff's damages. Plaintiff's losses and damages herein alleged were  
12 proximately caused by such conduct of these fictitiously named Defendants as well as the  
13 Defendants who are specifically named herein.

14 11. Plaintiff is currently unaware of the identities of the Presidents and/or CEOs of First  
15 Unum Life Insurance Company and therefore and hereby names such Presidents and/or CEOs as  
16 DOES 46-60. Plaintiff will amend this Complaint to allege their true names, capacities, and legal  
17 form when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of these  
18 fictitiously named Defendants is legally responsible in some manner for the occurrences, matters  
19 and wrongs herein alleged and, specifically that such DOE defendants did operate and manage  
20 the enterprise known as First Unum Life Insurance Company as criminal enterprise, supervising  
21 and overseeing the wrongs herein alleged and is, accordingly, responsible for such wrongs and for  
22 plaintiff's damages. Plaintiff's losses and damages herein alleged were proximately caused by  
23 such conduct of these fictitiously named Defendants as well as the Defendants who are  
24 specifically named herein.

25 12. Plaintiff is currently unaware of the identities of the Presidents and/or CEOs of Paul  
26 Revere Life Insurance Company and therefore and hereby names such Presidents and/or CEOs as  
27 DOES 61-75. Plaintiff will amend this Complaint to allege their true names, capacities, and legal  
28 form when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of these

First Amended Complaint:

- 4 -

Sommer v. UNUM

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To: 12136171562

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1 fictitiously named Defendants is legally responsible in some manner for the occurrences, matters  
 2 and wrongs herein alleged and, specifically that such DOE defendants did operate and manage  
 3 the enterprise known as Paul Revere Life Insurance Company as criminal enterprise, supervising  
 4 and overseeing the wrongs herein alleged and is, accordingly, responsible for such wrongs and for  
 5 plaintiff's damages. Plaintiff's losses and damages herein alleged were proximately caused by  
 6 such conduct of these fictitiously named Defendants as well as the Defendants who are  
 7 specifically named herein.

8 13. Plaintiff is currently unaware of the identities of the Presidents and/or CROs of United  
 9 States Life Insurance Company and therefore and hereby names such Presidents and/or CROs as  
 10 DOES 76-90. Plaintiff will amend this Complaint to allege their true names, capacities, and legal  
 11 form when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of these  
 12 fictitiously named Defendants is legally responsible in some manner for the occurrences, matters  
 13 and wrongs herein alleged and, specifically that such DOE defendants did operate and manage  
 14 the enterprise known as United States Life Insurance Company as criminal enterprise, supervising  
 15 and overseeing the wrongs herein alleged and is, accordingly, responsible for such wrongs and for  
 16 plaintiff's damages. Plaintiff's losses and damages herein alleged were proximately caused by  
 17 such conduct of these fictitiously named Defendants as well as the Defendants who are  
 18 specifically named herein.

19 14. Plaintiff is presently unaware of the true names, capacities, and legal form of the  
 20 Defendants sued herein as Does 91 through 300, and therefore sues these Defendants by such  
 21 fictitious names. Plaintiff will amend this Complaint to allege their true names, capacities, and  
 22 legal form when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of  
 23 the fictitiously named Defendants is legally responsible in some manner for the occurrences,  
 24 matters and wrongs herein alleged and that Plaintiff's losses and damages herein alleged were  
 25 proximately caused by such conduct of these fictitiously named Defendants as well as the  
 26 Defendants who are specifically named herein.

27 15. At all times herein mentioned, each of the Defendants was acting as the agent, servant,  
 28 representative, wholly or partially owned subsidiary, associate, employee or partner, conspirator

First Amended Complaint:

- 5 -

Summary: UNUM

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1 or co-conspirator, or property of the each of the other Defendants and was acting within the course  
2 and scope of said agency, representation, association, employment, partnership, conspiracy or  
3 other alleged legal, or illegal, relationship in doing the things alleged herein, and each of the  
4 Defendants authorized, approved, ratified, directed, conspired, and/or consented to all of the acts  
5 of each of the other Defendants.

6  
7 **II**  
**STATEMENT OF FACTS**

8 16. Plaintiff hereby re-alleges, as though fully set forth at length hereat each and every  
9 preceding allegation of this Complaint.

10 17. In November of 1988, plaintiff Alex Sommer was, at age fifty-one, a vice-president and  
11 partner in the internationally recognized brokerage firm of Henry H. Swift & Company. He and  
12 Bunny, his wife of twenty years, lived with their two children, Christian and Robin, in a home that  
13 they had built atop a hill in Strawberry. Alex awoke each day and looked from his living room at  
14 an unobstructed view that included Tiburon, Helvedere, portions of the City of Berkeley, the bay  
15 where he sometimes sailed with friends, and San Francisco, the City that was the seat of his career  
16 in business.

17 18. Alex had worked very hard to reach this station in life. He managed several very large  
18 accounts and, by dint of hard work and a reputation for honesty, had built up a portfolio of clients,  
19 both individual and institutional, stretching coast to coast.

20 19. Tragically, in late November 1988, Alex was diagnosed with a severe arterial venous  
21 malformation, a tangle of the blood vessels in his brain (hereinafter "AVM"). During December  
22 of 1988, Alex underwent three separate brain surgeries: one in preparation for repair of the AVM,  
23 one to repair the AVM itself; and one as a result of a rare but very virulent infection of the brain  
24 that he suffered as a result of the second surgery. Between the three surgeries Alex underwent  
25 over twenty-four hours of brain surgery.

26 20. Subsequent radiological studies reveal that, as a result of the surgeries and infection, a  
27 portion of Alex's brain, a sphere approximately the size of a ping-pong ball, is completely dead.  
28 This dead patch in Alex's Brain is located in the area of the brain having to do with higher

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1 cognitive function, and especially what are referred to, in the field of brain function analysis, as  
2 "Executive Functions."

3 21. Alex has undergone two separate batteries of brain function tests, one in 1995 and one in  
4 2004. These tests reveal that Alex has suffered significant and permanent injury to his brain's  
5 Executive Function capacity. According to the reports issued after each of these batteries of tests,  
6 the several traumas to Alex's brain have resulted in very significant neuro-psychiatric deficits in  
7 the following areas:

- 8 A. Impulsivity, with an inability to see the consequences of his actions;
- 9 B. Significant decline in his ability to retrieve information from memory after long delay;
- 10 C. Weakness in the ability to store information requiring associative verbal skills;
- 11 D. Verbal learning;
- 12 E. Reasoning efficiency;
- 13 F. Short term recall;
- 14 G. Delayed recall;
- 15 H. Sustained auditory attention;
- 16 I. Higher level set shifting and inhibition;
- 17 J. Generation of strategies for problem solving;
- 18 K. Affective control with respect to irritability and; especially, with  
19 Sustained attention and memory.

20 In fact, as a direct and proximate result of the above noted injuries and disabilities, Plaintiff is  
21 now, and has been since a date uncertain, before the date of his first brain surgery in December of  
22 1988, incompetent to act as a stock broker or to manage his own legal affairs as is evinced by the  
23 fact that his career as a stock broker ended permanently at that time and that he and has had a  
24 guardian ad litem appointed in each of the legal matters in which he has become involved.

25 22. After his surgeries, and because he was a *partner* in his firm and very well liked by  
26 everyone, Alex continued to work as a stock broker. However, and in fact, he was incompetent to  
27 act as a stockbroker. However he was unable to recognize this fact due to his injuries and his very  
28 positive personality. Eventually however, as his mental status continued to deteriorate and as he  
had repeated grand-mal seizures in the office, and was taken out of the office twice by ambulance,  
people began to notice the deterioration in his performance as a stock broker. Eventually Alex's  
employment was terminated. After such termination Plaintiff underwent the above noted  
neurological testing that revealed the noted neuro deficits set forth herein above and, also, a  
"chronic degenerative organic process" in the brain.

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SIGNED: LINDA

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23. Unable to function as a stockbroker, plaintiff made a claim against his disability insurance policies. All of Alex's insurers, defendants herein, denied all of Alex's claims that he was disabled. The one exception to this policy of denial of disability was Provident Accident and Life Insurance Company, which company, plaintiff is informed and believes and based thereon alleges, is a wholly or partially owned subsidiary of defendant Unum Provident Corporation and/or defendant UNUM. Provident Accident and Life Insurance Company paid plaintiff's claim. Plaintiff is informed and believes, and based thereon alleges, that the reason that Alex received his benefits from Provident Accident and Life Insurance Company and not from other companies owned by the same corporation is not a result of some difference in his disability as viewed by that insurer but rather, because of the nature of the damages available for a breach of that policy. A breach of the Provident Accident and Life Insurance Company policy, which was a private policy, might result in an insurance bad faith action leading to the possibility of an award of punitive damages while a breach of the terms of any of the other policies, which seem to have come under E.R.I.S.A. was likely to result in nothing more than contract damages.

24. Uncertain as to if, and/or how, he had been wronged, and in January 1996, Alex consulted an attorney. Approximately one month later, and on the advice of that attorney that he had been wronged, Alex retained said attorney to represent him in connection with a broad range of matters including, a wrongful termination matter, attempts to protect his assets from forfeiture or loss, and efforts to obtain disability insurance benefits from his disability insurance carriers through litigation. Such disability insurance carriers included but were not necessarily limited to defendants Unum Life Insurance Company of America, First Unum Life Insurance Company, all subsidiaries of defendant Unum Provident Corporation (and hereinafter, collectively, along with defendant Unum Provident Corporation and defendant UNUM, referred to as "UNUM,"), defendant Paul Revere Life Insurance Company, and defendant United States Life Insurance Company.

25. Plaintiff also engaged the legal services of this same attorney, a sole practitioner, to represent him in connection with claims related to his employers' improper (in light of Plaintiff's disability and condition) termination of his employment, their involvement in the denial of his

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1 insurance benefits and improper handling of disability issues relating to Plaintiff and his  
2 employment as a stockbroker. Defendants were also engaged to represent Plaintiff in connection  
3 with claims related to Plaintiff's employers' improper handling of certain securities related issues  
4 which, among other things, had caused significant financial harm to Plaintiff.

5 26. Sadly, the attorney was not well prepared to handle such a broad range of cases and, in  
6 fact, committed a series of missteps that resulted in most of plaintiff's claims being dismissed,  
7 with prejudice before trial.

8 27. Among other errors and omissions, the attorney failed to exhaust Plaintiff's  
9 administrative remedies and failed to timely file an administrative appeal of Plaintiff's disability  
10 insurance disputes.

11 28. As a result of such failures on the part of his attorney, plaintiff filed a Superior Court  
12 claim for legal malpractice against his attorney. Such claim was finally resolved, pursuant to a  
13 confidential settlement agreement, in the spring of 2005. The settlement reached was several  
14 orders of magnitude less than the amount of plaintiff's damages.

15 29. Among the losses that plaintiff has suffered as a direct and proximate result of his  
16 insurers' wrongful denial of disability benefits are: the loss of his home to foreclosure; economic  
17 pressures causing or contributing to the dissolution of his marriage of over twenty years; an  
18 inability to provide adequate care for his daughter, who suffers from a chronic, sometimes fatal  
19 illness or to obtain adequate rehabilitative care for himself. After the loss of his home and  
20 dissolution of his marriage, Plaintiff moved into government subsidized housing in the central  
21 district of San Rafael, where he continues to reside to the present day.

22 30. So matters remained until late November 2005, when Alex became aware that the  
23 California Department of Insurance, by and through the Insurance Commissioner, John  
24 Garapendi, had made and published certain findings of wrongdoing regarding his insurers in and  
25 of themselves and by and through their parent company Unum Provident Corporation.

26 31. Among the findings made by the California Department of Insurance are that UNUM:  
27 A. *Knowingly* applied a definition of "disability" in claims handling in a manner inconsistent  
28 B. *Mischaracterized* the claimant's occupation and/or its duties in determining whether the

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- 1 *claimant was disabled from performing with reasonable continuity the substantial and*  
 2 *material duties of his or her own occupation;*  
 3 C. *Selectively using independent medical examinations (IMEs) in UNUM's own advantage;*  
 4 D. *Overruling the opinion of the attending physician after UNUM's in-house medical*  
 5 *personnel conducted a merely "paper review" of the [claimant's] medical file; and,*  
 6 E. *That each such act was in violation of California Insurance Code §§ 700 and 704.*  
 7 (Emphasis added)

8 32. Insurance Code § 700 provides as follows:

9 **Admittance required; exception for State Compensation**  
 10 **Insurance Fund; penalties; compliance; hearings; issuance of certificate**

11 (a) A person shall not transact any class of insurance business in this  
 12 state without first being admitted for that class. Except for the State  
 13 Compensation Insurance Fund as authorized by Sections 1177 and  
 14 11778 to 11780.5, inclusive, admission is secured by procuring a  
 15 certificate of authority from the commissioner. The certificate shall not  
 16 be granted until the applicant conforms to the requirements of this  
 17 code and of the laws of this state prerequisite to its issue.

18 (b) The unlawful transaction of insurance business in this state in  
 19 willful violation of the requirement for a certificate of authority is a  
 20 public offense punishable by imprisonment in the state prison, or in a  
 21 county jail not exceeding one year, or by fine not exceeding one  
 22 hundred thousand dollars (\$100,000), or by both that fine and  
 23 imprisonment, and shall be enjoined by a court of competent  
 24 jurisdiction on petition of the commissioner.

25 (c) After the issuance of a certificate of authority, the holder shall  
 26 continue to comply with the requirements as in its business set forth  
 27 in this code and in the other laws of this state, including, but not  
 28 limited to, Chapter 5 (commencing with Section 1631), with regard to  
 employees or contractors who solicit, negotiate, or effect insurance.

(d) Where a hearing is held under this section the proceedings shall be  
 conducted in accordance with Chapter 5 (commencing with Section  
 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and  
 the commissioner shall have all the powers granted therein.

(e) The commissioner shall either issue or deny an application for a  
 certificate of authority within 180 calendar days after the date of the application.

(f) The commissioner and his or her authorized representative shall be  
 prohibited from seeking a waiver to extend the 180 calendar day  
 period specified in subdivision (e), nor shall the applicant be permitted  
 to waive that period.

33. Insurance Code § 704, Suspension of certificate; grounds; hearing, provides as  
 follows:

1 1 1 1 1

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The commissioner may suspend the certificate of authority of an insurer for not exceeding one year whenever he finds, after proper hearing following notice, that such insurer engages in any of the following practices:

(a) Conducting its business fraudulently.

(b) Not carrying out its contracts in good faith.

(c) Habitually and as a matter of ordinary practice and custom compelling claimants under policies, or liability judgment creditors of the insured, to either accept less than the amount due under the terms of the policies or resort to litigation against such insurer to secure the payment of the amount due.

The order of suspension shall prescribe the period of such suspension. The proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, [FNT] and the commissioner shall have all the powers granted therein.

(Emphasis Added)

34. Alex had experienced, and suffered from, many, if not all, of these subterfuges and swindles while being evaluated by the defendants herein, and each of them, for disability benefits. Not surprisingly, his claim for benefits to each of the defendants herein was denied. Further, Alex recognized for the first time that his was not a special case but, rather, according to these findings by the California Department of Insurance, the defendants herein, and each of them, were, in fact, companies that engaged in a regular pattern of such illegal activity in order to wrongfully deny benefits to their policy holders. During or about November of 2005, Alex first became aware that, in fact, that his former insurance companies were being run as rackets designed and intentionally set up to collect the premiums of himself and others like him but to deny him, and others, benefits.

35. "The difference between Unum and a MAFIA type racket," Alex has said, "is that if you paid Al Capone for protection - you got protection." "We," Alex and his fellow citizens, "pay for insurance protection but, when we need it, we get nothing."

36. In fact in a document entitled:

Public Report of the Market Conduct Examination of the Claims Practices of [defendant herein] the Unum Life Insurance Company of America, Provident Life and Accident Insurance Company, and, [defendant herein] Paul Revere Life Insurance Company,

and during or about November, 2005, the California Department of Insurance (the following further findings: that the above named companies, and each of them, did, numerous and variously:

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- A. Failed to provide a clear computation of the explanation of benefits;
- B. Failed to include a statement in their claim denial that, if the claimant believed the claim had been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance;
- C. Failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under the insurance policies;
- D. Misrepresented to claimants pertinent facts or insurance policy provisions relating to any coverage issue;
- E. Attempted to settle claims by making a settlement offer that was unreasonably low;
- F. Failed to disclose all benefits, coverage time limits or other provisions of the relevant insurance policy;
- G. Did not attempt, in good faith, to effectuate prompt, fair and equitable settlements of claims in which liability became reasonably clear;
- H. Failed to provide written notice of any statute of limitation or other time period requirement not less than sixty days prior to the expiration date as required by law;
- I. Improperly required claimants to give notification of a claim or proof of claim within a specified time;
- J. Failed to respond to communications within fifteen calendar days;
- K. Failed to acknowledge notice of claim within fifteen calendar days;
- L. Persisted in seeking information not reasonably required for, or material to, the resolution of the claim dispute;
- M. Failed to begin to begin the investigation of the claim within fifteen calendar days;
- N. Failed to adopt and communicate to all its claims agents written standards for the prompt investigation and processing of claims;
- O. Failed to record in the file the date the company received, the date the company processed and the date the company transmitted or mailed every relevant document in the file;
- P. Failed to provide written basis for the denial of the claim.

37. Plaintiff is informed and believes, and based thereon alleges, and discovery in this case will show, that the defendant enterprises herein, and each of them, did employ such wrongful schemes in denying to plaintiff his benefits and that, as a direct and proximate result thereof, plaintiff has suffered, continues to suffer, and will in future suffer grievous personal injury and harm and injury to his property rights. As a direct and proximate result of the wrongs alleged hereinabove Alex has suffered serious harm, including complete the loss of his custom built home in Strawberry in Marin County, the disintegration of his marriage as a result of the various stresses caused by the wrongs alleged herein, and feelings of guilt, remorse and despair resulting from his inability to meet his perceived obligations to his family.

III  
**FIRST CAUSE OF ACTION**  
**(FOR DAMAGES UNDER THE RACKETEER INFLUENCED**  
**AND CORRUPT ORGANIZATIONS ACT)**  
**Against All Defendants**

38. Plaintiff hereby re-alleges and incorporates by reference, as though fully set forth at length

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1 threat, each and every preceding allegation of this complaint.

2 39. Plaintiff is informed and believes and thereon alleges that defendants UNUM and, and each  
3 of the other defendants is, and/or at all times relevant to the allegations made herein was, an enterprise  
4 within the meaning of 18 U.S.C. section 1964(1), in that said defendants, and each of them, is an  
5 entity whose purpose is purportedly to sell and provide various types of personal lines insurance and  
6 specifically, as relates to the facts giving rise to this Complaint, to sell and provide disability  
7 insurance coverage.

8 40. Plaintiff is informed and believes, and based thereon alleges, that the activity of the  
9 enterprises known herein throughout as UNUM, and the activity of each of the other defendants  
10 herein, affected interstate commerce, in that defendants UNUM, and each of the other defendants  
11 herein, each licensed to do business in and, at all times relevant hereto, doing business in California  
12 as well as other states, utilized insurance agents and brokers and support staff, and otherwise  
13 maintained offices in the state of California and in other states, thereby necessitating the use of  
14 highways, railways, banking, telecommunications and the U.S. Mails.

15 41. Plaintiff is informed and believes, and based thereon alleges, that defendant Paul Revere Life  
16 Insurance Company, is, and at all times mentioned in this complaint was, associated with the UNUM  
17 enterprise in that Paul Revere Life Insurance Company was and/or is a wholly or partially owned  
18 subsidiary of UNUM, and that UNUM is a majority shareholder of Paul Revere Life Insurance  
19 Company.

20 42. Plaintiff is informed and believes, and based thereon alleges, that defendant First Unum Life  
21 Insurance Company, a New York Corporation is, and at all times mentioned in this complaint was,  
22 associated with the UNUM enterprise in that First Unum Life Insurance Company was and/or is a  
23 wholly or partially owned subsidiary of UNUM, and that UNUM is a majority shareholder of First  
24 Unum Life Insurance Company.

25 43. Plaintiff is informed and believes, and based thereon alleges, that defendant Unum Life  
26 Insurance Company of North America is, and at all times mentioned in this complaint was, associated  
27 with the UNUM enterprise in that Unum Life Insurance Company of North America was and/or is  
28 a wholly or partially owned subsidiary of UNUM, and that UNUM is a majority shareholder of Unum

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Signed: UNUM

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1 Revere Life Insurance Company.

2 44. Plaintiff is informed and believes, and based thereon alleges, that defendant enterprises  
3 UNUM, Unum Life Insurance Company of North America, First Unum Life Insurance Company,  
4 Paul Revere Life Insurance Company, and those DOE defendants named as Dues 1-75, *supra*,  
5 engaged in a pattern of racketeering conduct by personally causing others to engage in mail and/or  
6 wire fraud in violation of 18 U.S.C. section 1341, by using the United States mail to transmit  
7 fraudulent correspondence and by engaging in the pattern of wrongful, harmful and illegal acts set  
8 forth in the findings by the Insurance Commissioner of the State of California as set forth in  
9 paragraphs 32, 33 and 36 hereinabove.

10 45. Plaintiff is informed and believes, and based thereon alleges, that, in communicating via the  
11 U.S. Mails and via wire, with Plaintiff, Defendants, and each of them, promised that Plaintiff would  
12 be insured if and when he became totally disabled from his position as a stockbroker and a partner  
13 in a major stockbrokerage. The true facts are that defendants did not intend to insure plaintiff, but  
14 rather had so structured, organized and did maintain their respective businesses that defendants  
15 herein, and each of them, were not legitimate enterprises and/or insurance companies at all, but were,  
16 rather, a number of rackets, corrupt sham companies and enterprises organized for the purpose of  
17 collecting premiums but not paying valid claims.

18 46. Plaintiff is further informed and believes, and based thereon alleges, that when defendants  
19 made these representations concerning their willingness to insure Plaintiff and to pay him money,  
20 should he become disabled, they knew such representations to be false and that Defendants made  
21 these representations explicitly and solely with the intention to, and purpose of, inducing Plaintiff and  
22 other citizens similarly situated, to purchase insurance and pay premiums and to then and thereafter  
23 to deceive Plaintiff and thereby deprive and defraud him completely of the benefits promised under  
24 the disability policy.

25 47. Plaintiff, at the time these representations were made by Defendants, and at the time that  
26 Defendant took the actions herein alleged, was ignorant of the falsity of the Defendants'  
27 representations, and reasonably believed them to be true.

28 48. In reliance on Defendant's representations, Plaintiff was induced to and did give to

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1 Defendants money in the form of insurance premiums. Had Plaintiff known the actual facts he would  
2 not have taken such action. Plaintiff's reliance on Defendants' representations was justified because,  
3 as a stockbroker, plaintiff was aware that the defendant companies herein, and each of them, was a  
4 publicly traded company regulated under the laws of our state and our nation, which governmental  
5 entities thus stood as witnesses, overseers and guarantors of the integrity of such companies. Plaintiff  
6 is further informed and thereon alleges that all of the conduct of defendants, and each of them, is  
7 alleged in this complaint, was carried out while these defendants were participating in the conduct  
8 of enterprises of the various defendants herein, and each of them, in violation of 18 U.S.C. §1962(e)

9 49. Plaintiff is further informed and believes, and based thereon alleges, that defendants, and  
10 each of them, including any DOE defendants, agreed and conspired with each other and others to  
11 conduct the aforementioned racketeering, in violation of 18 U.S.C. §1964(d).

12 50. As a proximate result of the wrongful acts herein alleged, plaintiff has been specially and  
13 generally damaged in an amount to be determined at the time of trial.

14 51. The aforementioned acts and omissions by defendants and each of them, herein were  
15 conducted with a wilful and conscious disregard for the rights and safety of plaintiff, and in a manner  
16 constituting fraud and so warrant the award of punitive damages.

17  
18 **III**  
**SECOND CAUSE OF ACTION**  
**(FOR UNFAIR BUSINESS PRACTICES UNDER B&P CODE § 17200)**

19 52. Plaintiff hereby re-alleges and incorporates by reference, as though fully set forth at  
20 length hereat, each and every preceding allegation set forth this Complaint.

21 53. As alleged hereinabove, Defendants, and each of them, did advertise, hold out for sale  
22 and did sell, to plaintiff and others, certain products and services by way of insurance policies and  
23 benefits. Based on such advertising, holding out for sale and selling of such insurance policies  
24 and benefits by defendants, and each of them, Plaintiff did, in fact purchase several policies and  
25 did pay premiums for such policies over a period of years relying on the aforementioned insurance  
26 policies and benefits to protect him in the event that he should become disabled.

27 54. Plaintiff is informed and believes, and based thereon alleges that in so performing such  
28 acts, in so advertising, holding out for sale and selling such insurance products and services,

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1 defendants, and each of them, acted without any good faith intention of actually paying plaintiff  
2 should he become disabled. Rather, plaintiff is informed and believes and based thereon alleges,  
3 and asserts that discovery herein will show, that defendants, and each of them had intentionally  
4 arranged and did manage and operate their various enterprises, as alleged herein, that they created  
5 and set up mechanisms within each defendant enterprise in such a manner as to allow defendants,  
6 and each of them, to collect premiums and to avoid paying benefits on valid claims such as  
7 plaintiff's claims.

8 55. Defendants threaten to, and unless restrained, will continue to act as alleged herein and,  
9 further, will by precept and example continue to drag down the moral and ethical basis of our  
10 business community and our, largely mercantile, culture all to the detriment of other citizens such  
11 as plaintiff, the business community and our culture and civilization in general.

12 56. As approximate result of the above alleged acts of defendants, and each of them, plaintiff  
13 has been deprived of money, wealth, status and prestige and has been generally and specially  
14 harmed as otherwise set forth herein.

15  
16  
17 **IV**  
**THIRD COUNT**  
**(FOR INDEMNITY)**  
**Against All Defendants**

18 57. Plaintiff hereby re-alleges and incorporates by reference, as though fully set forth at  
19 length hereat, each and every preceding allegation set forth this Complaint.

20 58. Defendant insurer's, and each of them, as alleged herein above, did both expressly and  
21 impliedly insure and indemnify plaintiff against losses arising from his disability.

22 59. As further set forth hereinabove, plaintiff did, in fact, and while such policies of  
23 insurance and indemnification were in effect, become disabled.

24 60. Whereupon, defendants, and each of them, employing and using such improper,  
25 dishonest and wrongful schemes as alleged herein, as well as what ever other schemes and plans  
26 occurred to them at the moment did fail to indemnify and pay plaintiff as promised.

27 61. Whereby plaintiff has been generally, specially and otherwise grievously harmed, as set  
28 forth in this Complaint and as shall be proved at trial.

29 62. By reason of the foregoing, plaintiff is entitled to indemnification by defendants, and

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each of them, for all losses suffered and/or proximately caused by the failure of these defendants, as alleged herein, to previously indemnify plaintiff as also alleged elsewhere herein. But defendants have not paid any part of such indemnification or damages to plaintiff.

V  
**FOURTH COUNT**  
**(FOR PUNITIVE DAMAGES)**  
**Against All Defendants**

63. Plaintiff hereby re-alleges and incorporates by reference, as though fully set forth at length hereat, each and every preceding allegation set forth this Complaint.

64. In doing the things herein alleged, defendants and each of them acted, recklessly and willfully and with a willful and conscious disregard of the rights and safety of plaintiff and, further, with the actual intent to cause injury to the plaintiff so that they might profit thereby. Accordingly, the acts herein alleged were oppressive, fraudulent and malicious, thereby warranting an assessment of punitive damages in an amount appropriate to punish defendants and deter others from engaging in similar misconduct.

65. Further, in doing the things herein alleged, defendants and each of them acted, oppressively toward plaintiff whom they knew to be disabled with a serious brain injury. Accordingly, the acts herein alleged were oppressive, thereby warranting an assessment of punitive damages in an amount appropriate to punish defendants and deter others from engaging in similar misconduct.

66. As a further proximate result of the acts and omissions of Defendants, Plaintiff is entitled to treble damages and attorney's fees pursuant to 18 U.S.C. § 1964 (c).

WHEREFORE, Plaintiff prays for a judgment and damages as follows:

1. For a sum to adequate to compensate Plaintiff for his lost disability benefits;
2. For a sum to adequate to compensate Plaintiff for the losses suffered as a direct and or proximate result of plaintiff's lost disability benefits;
2. For attorneys' fees in bringing this action;
4. For other special damages according to proof;
5. For treble damages as provided by statute;
5. For general damages, including emotional injury, according to proof;

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6. For prejudgment interest according to proof;
7. For punitive damages;
8. For costs of suit herein; and
9. For such other and further relief as the court finds is just and right.

DATED: May 1, 2007

By: 

STEPHEN STEELMAN

THE LAW OFFICE OF STEPHEN W. STEELMAN

Counsel to Plaintiff

Alexander P. Sommer

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all causes of action.

DATED: May 1, 2007

By: 

STEPHEN STEELMAN

THE LAW OFFICE OF STEPHEN W. STEELMAN

Counsel to Plaintiff

ALEXANDER P. SOMMER



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1 STEPHEN W. STEELMAN (CSBN 196147)  
2 LAW OFFICE OF STEPHEN W. STEELMAN  
3 22 Battery Street, Suite 333  
4 San Francisco, CA 94111  
5 Tel: (415) 593-3777  
6 Fax: (415) 593-3778

7 Attorney for Plaintiff  
8 ALEXANDER P. SOMMER

9 IN THE SUPERIOR COURT OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF MARIN

11 -00000-

12 ALEXANDER P. SOMMER, an individual

CASE NO. CIV 064927

13 Plaintiff,

14 v.

PROOF OF SERVICE

15 UNUM, UNUM PROVIDENT  
16 CORPORATION, UNUM PROVIDENT LIFE  
17 INSURANCE COMPANY OF AMERICA,  
18 FIRST UNUM LIFE INSURANCE  
19 COMPANY, PAUL REVERE LIFE  
20 INSURANCE COMPANY;

21 and,

22 DOES 1-300,

23 Defendants.

24 Sommer v. UNUM

POS (S&C)

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MAY-21-2007 22:35

From: STEELMAN LAWMAN

To: 12136171562

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1 I, the undersigned, declare that: I am over the age of eighteen years, and not a party to the  
2 above captioned case; I am employed in, and am a resident of, the City and County of San Francisco,  
3 California, and my business address is 22 Battery Street San Francisco, California, 94111.

4 On May 2, 2007, I caused to be served the following true and correct copies of the following  
5 documents:

6 **SUMMONS,**  
7 **FIRST AMENDED COMPLAINT,**  
8 **CIVIL CASE COVER SHEET,**  
9 **ALTERNATIVE DISPUTE RESOLUTION PACKAGE**

10 Via Hand Delivery, to:

11 UNUM, Served through agent for  
12 service of process: JERE  
13 KEPRIOS, C T CORPORATION  
14 SYSTEM 818 WEST SEVENTH  
15 ST LOS ANGELES, CA 90017

16 UNUM PROVIDENT CORPORATION,  
17 Served through agent for service of  
18 process: JERE KEPRIOS, C T  
19 CORPORATION SYSTEM 818 WEST  
20 SEVENTH ST LOS ANGELES, CA  
21 90017

22 UNUM PROVIDENT LIFE  
23 INSURANCE COMPANY OF  
24 AMERICA, Served through agent  
25 for service of process: JERE  
26 KEPRIOS, C T CORPORATION  
27 SYSTEM 818 WEST SEVENTH  
28 ST LOS ANGELES, CA 90017

PAUL REVERE LIFE INSURANCE  
COMPANY, Served through agent for  
service of process: STEPHEN H,  
GALTON, 500 SOUTH GRAND  
AVENUE SUITE 1200 LOS ANGELES,  
CA 90071

18 Pursuant to the provisions of California Insurance Code §12931, I also caused the above  
19 listed documents to be served, through the Offices of the California Insurance Commissioner at  
20 300 Capital Mall, Suite 1700, Sacramento, CA 95814, upon:

21 **FIRST UNUM LIFE INSURANCE COMPANY OF AMERICA,**  
22 an insurer not licensed to do business in California and having no agent for service of process in  
23 this state.

24 I declare under penalty of perjury under the laws of the State of California that the  
25 foregoing is true and correct.

26 Dated: 2 May, 2007



STEPHEN W. STEELMAN

Smith v. UNUM

- 2 -

FOS (S&C)

FILED IN - 5/2007 10:32 PM

MAY-01-2007 22:31

From: STEELMAN LAWMAN

To: 12136171562

Page: 3/26

<b>STEPHEN W. STEELMAN</b> (State Bar # 196147) <b>LAW OFFICE OF STEPHEN W. STEELMAN</b> 22 BATTERY STREET, SUITE 333, SAN FRANCISCO, CA 94111 TELEPHONE NO. (415) 392-5040 FAX NO. (415) 392-3729 ATTORNEY FOR PLAINTIFF: <b>ALEXANDER P. SOMMER, PLAINTIFF</b> SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN STREET ADDRESS: 3501 CIVIC CENTER DRIVE MAILING ADDRESS: 3501 CIVIC CENTER DRIVE CITY AND ZIP CODE: SAN RAFAEL 94903 BRANCH NAME: MAIN		FOR COURT USE ONLY SUPERIOR COURT MAY 14 P 3:33
CASE NAME: <b>SOMMER V. UNUM</b>		CASE NUMBER: <b>CM 011</b> <b>C64912</b> JUDGE: <b>VERNON F. SMITH</b> DEPT:
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 181f)

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case.

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Automobile (24) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) <b>Non-PIP/DWD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PIP/DWD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (33)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (16) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandamus (02) <input type="checkbox"/> Other judicial review (30)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 1850-1852) <input type="checkbox"/> Antitrust/trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input checked="" type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint not specified above (43) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition not specified above (43)
--	---	--

2. This case ☐ is ☒ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial post-judgment judicial supervision

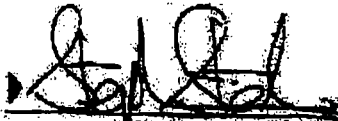
3. Type of remedies sought (check all that apply):  
 a. ☒ monetary b. ☒ nonmonetary, declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): PQIR (4)

5. This case ☐ is ☒ is not a class action suit.

Date: November 14, 2006

**STEPHEN STEELMAN**  
 (TYPE OR PRINT NAME)

  
 SIGNATURE OF PARTY OR ATTORNEY FOR PARTY

**NOTICE**

Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.

File this cover sheet in addition to any cover sheet required by local court rule.

If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.

Unless this is a complex case, this cover sheet will be used for statistical purposes only.

 Filed Electronically for Mandatory Use  
 Judicial Council of California  
 Casefile Rev. July 1, 2003

## CIVIL CASE COVER SHEET

 Case Number: CM 011-0572007-1642-02  
 Date Filed: 05/31/2007  
 Filed By: 12136171562

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MAY-01-2007 22:35

From: STEELMAN LAWMAN

To: 12136171562

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**SUPERIOR COURT OF CALIFORNIA****County of Marin**

3501 Civic Center Drive

P.O. Box 4988

San Rafael, CA 94913-4988

**NOTICE TO PLAINTIFFS****CIVIL TRIAL DELAY REDUCTION PROGRAM  
REQUIRES PROCEDURES AND TIME LINES TO BE MET**

All civil actions filed on or after July 1, 2002 except actions filed under the Family Law Act, the Juvenile Court Law, Petition for Writs of Mandate or Prohibition, Change of Name, Harassment Restraining Orders, Domestic Violence Prevention Act Restraining Orders, and Adoptions, are included in the Civil Trial Delay Reduction Program. Marin County Superior Court - Civil Rules for the program require that you meet certain time lines for filing of documents. Please refer to Marin County Superior Court - Civil Rules for more particulars.

You must serve the following documents, which you will receive from the Court Clerk's office, with the complaint on all other parties:

- A copy of this letter
- A copy of the Notice of Case Management Conference
- Stipulation to Use of Alternative Dispute Resolution Process
- Ex Parte Application for Extension of Time to Serve Pleading and Orders
- Case Management Statement
- Notice of Stay of Proceedings
- Notice of Termination or Modification of Stay
- Notice of Settlement of Entire Case
- Statement of Agreement or Nonagreement
- ADR Information Sheet

This service must be accomplished and Proof of Service must be filed within 60 days of the filing of the complaint.

The Case Management Conference will be held approximately 140 days from the filing of the Complaint. The exact date and judge assignment is indicated on the form you received in the Clerk's office when you filed your complaint.

Failure to comply with the program rules may result in the imposition of sanctions and will in each instance result in the issuance of an order that you show cause why you have not complied.

Examples of Alternative Dispute Resolution (ADR) procedures offered in Marin County include:

- Binding and non-binding arbitration
- Mediation
- Neutral case evaluation

It is important that you review these programs with your client. It will increase the possibility of your client's case being resolved at an early, and less expensive, stage of the proceedings. All Judges in the civil trial delay reduction program are supportive of the use of alternative dispute resolution programs and are available to meet with you and the other parties prior to your Case Management Conference to assist in selecting the most appropriate resolution mechanism for your case.

You are required to complete and return the ADR Information Form, ADR-100 or ADR-101, within 10 days of the resolution of the dispute.

Telephonic appearances at Case Management Conference may be available by contacting COURT CALL, an independent vendor, not less than 5 court days prior to the hearing date. Parties may make arrangements by calling 888-882-8578. This service is subject to charges by the vendor.

MAY-01-2007 22:35

From: STEELMAN LAWMAN

Tel: 12136171562

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<b>ATTORNEY OR PARTY WITHOUT ATTORNEY</b> (Name, address and telephone if):		<b>FOR COURT USE ONLY</b>
STATE BAR NO: ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN 3501 Civic Center Drive P. O. Box 4900 San Rafael, CA 94913-4888		CASE NUMBER:
<b>STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS</b>		

The parties to the above action have stipulated that this case be submitted for Alternative Dispute Resolution to be decided at the Case Management Conference.

Dated \_\_\_\_\_

Attorney For \_\_\_\_\_

Dated \_\_\_\_\_

Attorney For \_\_\_\_\_



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From: STEELMAN LAWMAN

To: 12136171562

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NAME OF COURT: \_\_\_\_\_

**ADR Information Form**

This form should be filled out and returned,  
within 10 days of the resolution of the dispute, to:



1. Case name: \_\_\_\_\_ No: \_\_\_\_\_
  2. Type of civil case: ☐ PIPD-Auto ☐ PIPD-Other ☐ Contract ☐ Other (specify): \_\_\_\_\_
  3. Date complaint filed: \_\_\_\_\_ Date case resolved: \_\_\_\_\_
  4. Date of ADR conference: \_\_\_\_\_ 5. Number of parties: \_\_\_\_\_
  6. Amount in controversy ☐ \$0-\$25,000 ☐ \$25,000-\$50,000 ☐ \$50,000-\$100,000 ☐ over \$100,000 (specify): \_\_\_\_\_
  7. ☐ Plaintiff's Attorney ☐ Cross-Complainant's Attorney 8. ☐ Defendant's Attorney ☐ Cross-Defendant's Attorney
- |  |  |
|--|--|
| NAME: _____<br>ADDRESS: _____<br>TELEPHONE NUMBER: _____ | NAME: _____<br>ADDRESS: _____<br>TELEPHONE NUMBER: _____ |
|--|--|
9. Please indicate your relationship to the case:  
☐ Plaintiff ☐ Plaintiff's attorney ☐ Defendant ☐ Defendant's attorney  
☐ 3rd party defendant ☐ 3rd party defendant's attorney ☐ Other (specify): \_\_\_\_\_
  10. Dispute resolution process:  
☐ Mediation ☐ Arbitration ☐ Neutral case evaluation ☐ Other (specify): \_\_\_\_\_
  11. How was case resolved?  
 a. ☐ As a direct result of the ADR process.  
 b. ☐ As an indirect result of the ADR process. c. ☐ Resolution was unrelated to ADR process.
  12. Check the closest dollar amount that you estimate you saved (attorneys' fees, expert witness fees, and other costs) by using this dispute resolution process compared to resolving this case through litigation, whether by settlement or trial.  
☐ \$0 ☐ \$250 ☐ \$500 ☐ \$750 ☐ \$1,000 ☐ more than \$1,000 (specify): \$ \_\_\_\_\_
  13. If the dispute resolution process caused a net increase in your costs in this case, check the closest dollar amount of the additional cost:  
☐ \$0 ☐ \$250 ☐ \$500 ☐ \$750 ☐ \$1,000 ☐ more than \$1,000 (specify): \$ \_\_\_\_\_
  14. Check the closest number of court days that you estimate the court saved (motions, hearings, conferences, trial, etc.) as a result of this case being referred to this dispute resolution process:  
☐ 0 ☐ 1 day ☐ more than 1 day (specify): \_\_\_\_\_
  15. If the dispute resolution process caused a net increase in court time for this case, check the closest number of additional court days:  
☐ 0 ☐ 1 day ☐ more than 1 day (specify): \_\_\_\_\_
  16. Would you be willing to consider using this dispute resolution process again? ☐ Yes ☐ No

Form Approved by the  
 Superior Courts of California  
 ADR-001 (Rev. March 1, 2004)

**ADR INFORMATION FORM**

Amendments by the  
 Superior Courts of California  
 ADR-001 (Rev. March 1, 2004)

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